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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

STEVEN D. JOHNSON,

Plaintiff and Appellant,

v.

SANTOS ANGUIANO et al.,

Defendants and Respondents.

D073945

(Super. Ct. No. 37-2016-00016124-
CU-OR-NC)

APPEAL from a judgment of the Superior Court of San Diego County,
Jacqueline M. Stern, Judge. Affirmed.

Gary H. Giesler for Plaintiff and Appellant.

The Sterling Law Group, Randall C. Sterling and Justin R. Sterling for Defendants
and Respondents.

INTRODUCTION

This case involves a dispute between neighbors regarding whether Steven Johnson can drive his truck and boat trailer over an asphalt berm and through a dirt area at the end of a paved lane to park his boat trailer on his property. Johnson contends he is entitled to

do so based on an easement established either by grant or prescription, but his neighbors, Santos and Kumson Kiyoko Anguiano (the Anguianos), blocked access to the area by placing obstructions such as concrete blocks, sandbags, and trenches in the area. Johnson sued the Anguianos for trespass, private nuisance, public nuisance, and intentional interference with emotional tranquility. After a bench trial, the trial court concluded Johnson did not meet his burden of proof on his causes of action because he did not establish entitlement to the purported easement for trespass or nuisance and did not establish a nexus between the Anguianos' conduct and his claimed physical and emotional injuries. Therefore, the court entered judgment for the Anguianos. Johnson appeals contending the court erred in granting judgment for the Anguianos and in failing to grant summary judgment for him in a prior motion. We affirm the judgment concluding substantial evidence supported the court's determination.

BACKGROUND

A

Johnson has lived on property adjacent to the Anguianos for more than 20 years. Johnson parks a boat that is 23 feet 20 inches long on his property. He uses the boat once or twice a month. Johnson shares with two neighboring lots a driveway on a 20-foot wide easement that is 50 to 60 feet long. .

Johnson's deed describes he has access to an "easement and right of way for road, sewer, water, gas, power and telephone lines and appurtenances thereto over, under, along and across a strip of land 60.00 feet in width" according to a map filed in the

county recorder's office in 1895. The deed provides a legal description, in technical terms, of the center line of the 60-foot strip.

Johnson presented the trial court with a plot map he said was filed with the San Diego County Assessor's office. The map depicts his property, the property of his neighbors, and an area referred to as Pebble Springs Lane. Johnson testified there is asphalt on Pebble Springs Lane, which he and others use as a road.

Johnson testified his real estate agent outlined the easement area and Johnson's driveway in red on the plot map. The court and counsel agreed what the real estate agent told Johnson about the location of the easement was inadmissible hearsay. The court did not permit Johnson to testify as an expert and Johnson did not designate an expert to testify about the location of the easement.

Johnson testified, based on his experience and perception, that the area marked in red on the plot map is Pebble Springs Lane, which "serves all residences that connect to Pebble Springs [Lane] as access in and out of [the] neighborhood" to a main street. The court expressed confusion about what the map showed and the markings.

Johnson stated the driveway he shares with two other lots is sloped, as is Pebble Springs Lane. He stated he created a path through the easement area onto Pebble Springs Lane so he can drive into and out of his property with his boat trailer. When he drove out of his property with his boat trailer, he used only a small area of disputed area, but when he returned, he drove over the entire disputed dirt area to park his boat. He claimed there is no safe way to take his boat on and off his property other than through the route he created due to the slope of his property.

Johnson believed he had the right to use the easement based on his reading of the description of parcel 2 in his deed, looking at maps, and from speaking with the previous owners, neighbors, and a real estate agent. Johnson walked off the distance from neighboring fences to the middle of the existing roadway. He did not retain an expert to provide a description of the easement.

Johnson never consulted with a registered civil engineer regarding his testimony about the maps of the area. Johnson stated he had some experience as a draftsman of drawings depicting electronic products and some experience with maps when he worked for a prior employer. However, there was no attempt to qualify Johnson as an expert to interpret the legal description or the map. The court did not permit Johnson to opine about the location of the easement based on lack of foundation and Johnson's lack of expert qualifications.

B

Johnson said he used the route to take his boat on and off the property since he moved into the property in 1986. The Anguianos knew he used the route because they would meet him in the roadway and he would give them fish when he returned from fishing trips. Johnson testified the Anguianos extended their driveway and moved the gate and fence into the easement for the roadway in the 1980s.

Johnson claimed the Anguianos started blocking his ability to take his boat on and off the property in late 2010. They initially placed cement blocks. Johnson said they attempted to block access to his property every time he went fishing, which was twice a month since 2010.

They initially used two or three cement blocks. Then there were six or seven cement blocks with bricks placed on top. In October of 2015, they blocked access with 10 cement blocks, 15 bricks and pavers, large boulders, large logs, a trench, and a sign saying, "private property easement, no trespassing." Later, they used sandbags, rebar stakes pounded into the ground, and large boulders. They also dug three- to four-foot deep trenches and filled them with water.

The Anguianos moved a mailbox from across the lane to the corner of their gate, which Johnson said also blocked his ability to move his boat. The Anguianos subsequently moved the mailbox to a different location.

Johnson testified the obstructions were placed in the roadway. However, Johnson presented photographs showing trenches and other obstructions built outside the Anguianos' gate, in a dirt area beyond an asphalt berm at the end of the asphalt roadway. Johnson believed he had a prescriptive right to drive over the dirt area and said the asphalt berm held dirt back from the slope. Johnson agreed the area where the Anguianos placed the sandbags was at least six feet away from Johnson's property line.

Johnson spoke to Mr. Anguiano twice in 2014 and asked him to stop putting blocks in the area Johnson believed was an easement. Mr. Anguiano said his wife liked to decorate and he would have to speak to her. In July 2014 Johnson spoke to Mrs. Anguiano when he returned with his boat and asked her to stop putting blocks in the easement. She responded by saying they had asked and it was okay. Johnson claimed he did not understand the comment. A few months later Johnson asked Mr. Anguiano if

they could reach a solution, Mr. Anguiano said "absolutely not" because Johnson had offended Mrs. Anguiano by asking her not to put the blocks out.

C

Johnson testified his wife was ill when the obstructions were placed in 2010. She died in 2011. He stated the continued obstruction exacerbated his emotional distress because he had considered the Anguianos friends as well as neighbors and he felt betrayed and vulnerable by their harassment. The obstruction interfered with his use of his boat, which he said grounded him emotionally.

Johnson said he fixed the obstructions to his property approximately 94 times. Johnson flattened out the trenches, so he could drive his boat trailer through the area. He claimed he endured physical pain and mental anguish from the obstructions he had to remove.

A friend of Johnson's who went fishing with Johnson removed obstacles so Johnson could drive the boat trailer on and off his property. Another fishing friend testified that since December 2010, he saw sandbags, boulders, and trenches filled with water which obstructed the way for Johnson to get his boat on and off the property. Obstacles appeared nearly every time they returned from fishing, starting with bricks, then larger blocks, then rocks and debris. On one occasion trenches appeared between the time they left to go fishing and when they returned. The friend helped move smaller obstacles.

Johnson's neighbor, who lives across the shared driveway, testified the lane ends at his and Johnson's property and they share a driveway for access to their homes. The

neighbor testified he was familiar with how Johnson parked his boat trailer and how Johnson took his boat on and off his property. The neighbor saw sandbags, rebar stakes, boulders, trenches, and trenches filled with water near Johnson's property. They were not in the road. The neighbor observed the Anguianos digging the trenches and placing rocks and boulders along the edge of the road. The neighbor testified the Anguianos' driveway adjoins the lane and they share a property border with Johnson. The trenches were in the dirt area between the properties.

Another friend of Johnson's testified the situation with Johnson's neighbors caused him to be anxious, stressed, and depressed. Johnson had trouble sleeping, saw a doctor for depression and was prescribed medication. Johnson complained of pain in his shoulder from cleaning up sandbags, rebar stakes, cement blocks, and trenches filled with water near his property.

D

After Johnson rested his case, the Anguianos moved for nonsuit. The Anguianos' counsel argued Johnson did not meet his burden to prove his first cause of action for trespass based upon interference with road easement because Johnson did not provide expert testimony to describe the location of the easement to establish the Anguianos were interfering with the easement. Similarly, he did not establish his second or third causes of action for private and public nuisance because he did not establish an ownership interest in the property in contention or that the Anguianos behavior was objectionable to anyone other than Johnson. Finally, Johnson did not provide evidence of emotional or

physical injury as a result of the Anguianos' conduct as opposed to preexisting conditions.

After hearing arguments from both sides, the court stated it was directing a verdict in favor of the Anguianos. The court stated Johnson had not established the location of the easement or any legal right to the area. "I don't know where a so-called easement is, because there has been no expert testimony about that." There was no public nuisance because there was no blockage of public access. The obstacles were not placed in the roadway. There was no private nuisance and the court found no nexus between the behavior of the Anguianos and Johnson's claimed injuries.

DISCUSSION

I

Motion for Judgment

Johnson contends the evidence did not support judgment for the Anguianos. First, we must clarify the procedural posture of the case. The defense motion was for nonsuit. The court granted the motion but phrased it as a directed verdict. Neither is correct. Nonsuit is appropriate only after a jury trial. (Code Civ. Proc., § 581c, subd. (a).) In a trial by the court, the correct motion after the close of the plaintiff's case is a motion for judgment. (Code Civ. Proc., § 631.8, subd. (a).) The parties agree we should treat the court's order as a judgment for the Anguianos under Code of Civil Procedure section 631.8, subdivision (a). (*Jazayeri v. Mao* (2009) 174 Cal.App.4th 301, 314, fn. 23; *Commonwealth Memorial, Inc. v. Telophase Society of America* (1976) 63 Cal.App.3d 867, 869, fn. 1.)

A

In ruling on a motion for judgment, "[t]he court as trier of the facts shall weigh the evidence and may render a judgment in favor of the moving party, in which case the court shall make a statement of decision as provided in Sections 632 and 634." (Code Civ. Proc., 631.8, subd. (a).) The court may make credibility determinations and may determine what, if any, reasonable inferences may be drawn from the evidence. (*Roth v. Parker* (1997) 57 Cal.App.4th 542, 550.)

A statement of decision is not required unless requested by a party. (Code Civ. Proc., § 632.) If no statement of decision is requested, "[u]nder the doctrine of implied findings, the reviewing court must infer, following a bench trial, that the trial court impliedly made every factual finding necessary to support its decision." (*Fladeboe v. American Isuzu Motors Inc.* (2007) 150 Cal.App.4th 42, 48.)

" ' "The standard of review after a trial court issues judgment pursuant to Code of Civil Procedure section 631.8 is the same as if the court had rendered judgment after a completed trial—that is, in reviewing the questions of fact decided by the trial court, the substantial evidence rule applies." ' [Citation.] ' "But, we are not bound by a trial court's interpretation of the law...." ' [Citation.] ' "We review legal issues ... under a de novo or independent standard." ' " (*Orange County Water Dist. v. MAG Aerospace Industries, Inc.* (2017) 12 Cal.App.5th 229, 239–240.)

We review the trial court's rulings regarding the admission or exclusion of evidence for an abuse of discretion. (*People v. DeHoyos* (2013) 57 Cal.4th 79, 131 (*DeHoyos*).) " 'A trial court's exercise of discretion in admitting or excluding

evidence ... will not be disturbed except on a showing the trial court exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice.' " (*Christ v. Schwartz* (2016) 2 Cal.App.5th 440, 446–447.) This includes rulings regarding the admissibility of lay opinion testimony. (*Krolikowski v. San Diego Employees' Retirement System* (2018) 24 Cal.App.5th 537, 573; *Osborn v. Mission Ready Mix* (1990) 224 Cal.App.3d 104, 112 [rulings sustaining objections to lay opinion testimony are more frequently upheld than reversed].)

B

" 'Trespass is an unlawful interference with possession of property.' [Citation.] The elements of trespass are: (1) the plaintiff's ownership or control of the property; (2) the defendant's intentional, reckless, or negligent entry onto the property; (3) lack of permission for the entry or acts in excess of permission; (4) harm; and (5) the defendant's conduct was a substantial factor in causing the harm. (See CACI No. 2000.)" (*Ralphs Grocery Co. v. Victory Consultants, Inc.* (2017) 17 Cal.App.5th 245, 261–262.) "[I]n order to state a cause of action for trespass a plaintiff must allege an unauthorized and tangible entry on the land of another, which interfered with the plaintiff's exclusive possessory rights." (*McBride v. Smith* (2018) 18 Cal.App.5th 1160, 1174 (*McBride*).)

1

Johnson did not meet his burden to establish trespass because he did not provide evidence for the first element of trespass, a possessory interest in the land. Johnson admitted the area of property in dispute is not part of his own property. Instead, he asserted he is entitled to use the area pursuant to an easement.

"An easement 'represents a limited privilege to use the land of another ..., but does not create an interest in the land itself.' [Citation.] ' ' 'An easement involves primarily the privilege of doing a certain act on, or to the detriment of, another's property.'

[Citation.] An easement gives a nonpossessory and restricted right to a specific use or activity upon another's property, which right must be less than the right of ownership.

[Citation.]" [Citation.] Thus, "[t]he owner of an easement is not the owner of the property, but merely the possessor of a 'right to use someone's land for a specified purpose' " " " (*McBride, supra*, 18 Cal.App.5th at p. 1174.) Therefore, as a matter of law, Johnson could not establish a cause of action for trespass because, even if he holds an easement to the area in dispute, it does not give him an exclusive possessory right in the property. (*Ibid.*, citing *Kazi v. State Farm Fire & Casualty Co.* (2001) 24 Cal.4th 871, 881; *Harrison v. Welch* (2004) 116 Cal.App.4th 1084, 1092 (*Harrison*) [an easement "is not an ownership interest, and certainly does not amount to a fee simple estate"].)

2

Johnson did not alternatively establish a claim for enforcement of an easement or interference with an easement because he did not establish entitlement to an easement over the area in question for a specific, limited, and definable use. (*McBride, supra*, 18 Cal.App.5th at p. 1175, citing Civ. Code, §809.)

Johnson submitted his deed which describes an easement for a road and utilities with a legal description in metes and bounds. He also presented a map of the area with words indicating the existence of Pebble Springs Lane.

Prior to trial, in a joint trial readiness report, the parties listed two legal issues not in dispute: "1. [The Anguianos] have no legal right or document allowing them to interfere with [Johnson] moving his boat on and off his property. [¶] 2. Johnson, pursuant to Parcel 2 in his Deed, has the right to use Pebble Springs Lane to move his boat on and off his property as he has in the past." Contrary to Johnson's contention on appeal, this pretrial agreement is not dispositive of anything. It merely states Johnson may use the lane to move his boat. It does not indicate the location of the easement for Pebble Springs Lane or whether the dirt area in dispute fell within the easement. Johnson and his neighbor both admitted they have a driveway for access to their homes extending from the end of Pebble Springs Lane.

There was no testimony from a qualified expert to describe for the court whether the dirt area in dispute fell within the granted easement. (Evid. Code, §§ 720, subd. (a), 801.) The court stated it could not determine where Johnson's property line ended, who owned the area where he wanted to haul his boat, or where the easement was "because there has been no expert testimony about that." Johnson did not present "expert or credible testimony regarding any legal right [Johnson] has in the alleged transit area."

The court did not permit Johnson to testify about the location of the easement because he did not establish he was qualified to render expert opinion on the subject. "'A lay witness may express an opinion based on his or her perception, but only where helpful to a clear understanding of the witness's testimony (Evid. Code, § 800, subd. (b)), 'i.e., where the concrete observations on which the opinion is based cannot otherwise be conveyed.' [Citation.]" (DeHoyos, *supra*, 57 Cal.4th at p. 130.) "Matters that go

beyond common experience and require particular scientific knowledge may not properly be the subject of lay opinion testimony." (*Id.* at p. 131.) We conclude the court did not abuse its discretion in precluding Johnson from testifying about the location of the easement.

Johnson also did not establish entitlement to use the area by way of a prescriptive easement. "The elements of an easement by prescription are open and notorious adverse use of the land of another that is continuous and uninterrupted for the five-year statutory period. [Citation.] The burden of proof is on the party asserting the prescriptive easement." (*Hinrichs v. Melton* (2017) 11 Cal.App.5th 516, 525; Civ. Code, § 1007; Code Civ. Proc., § 321.) "The term "adverse" in this context is essentially synonymous with "hostile" and "under claim of right." " (*McBride, supra*, 18 Cal.App.5th at p. 1181.) "[A] claimant's use is adverse to the owner if the use is made without any express or implied recognition of the owner's property rights. [Citations.] In other words, a claimant's use is adverse to the owner if it is wrongful and in defiance of the owner's property rights. [Citation.]" (*Ibid.*) "Use with the owner's permission, however, is not adverse to the owner. [Citations.] To be adverse to the owner a claimant's use must give rise to a cause of action by the owner against the claimant. [Citations.] This ensures that a prescriptive easement can arise only if the owner had an opportunity to protect his or her rights by taking legal action to prevent the wrongful use, yet failed to do so. [Citations.]" (*Ibid.*)

Here, Johnson testified he hauled his boat over the dirt area approximately two times a month after he moved into the property in the 1980s. However, he also stated the

Anguianos met him on the road after fishing trips and accepted fish. Presuming the property is owned by the Anguianos, it is reasonable to infer the Anguianos gave permission for Johnson to use the area for a period of time until they changed their mind and decided to use the property in 2010, more than five years before he filed his lawsuit in 2016.

Further, as the trial court observed, granting Johnson an exclusive prescriptive easement would, as a practical matter prohibit the true owner, whoever that might be, from using his or her land. Such an easement has no application to a "garden-variety residential boundary encroachment." (*Harrison*, 116 Cal.App.4th at p. 1093.)

Thus, there was substantial evidence to support the court's determination Johnson did not prove his claim for trespass or interference with an easement.

C

Johnson also did not meet his burden of proving public or private nuisance. "Anything which is ... an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of ... any public park, square, street, or highway, is a nuisance." (Civ. Code, § 3479.)

1

"A public nuisance is one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal." (Civ. Code, § 3480

" "[P]ublic nuisances are offenses against, or interferences with, the exercise of *rights common to the public*." [Citation.] "Of course, not every interference with collective social interests constitutes a public nuisance. To qualify, and thus be enjoined [or abatable], the interference must be both *substantial* and *unreasonable*." [Citation.] It is substantial if it causes significant harm and unreasonable if its social utility is outweighed by the gravity of the harm inflicted. [Citation.]' " (*People v. ConAgra Grocery Products Co.* (2017) 17 Cal.App.5th 51, 112.)

The standard for both inquiries is objective. The degree of harm considers "what effect would the invasion have on persons of normal health and sensibilities living in the same community? [Citation.] 'If normal persons in that locality would not be substantially annoyed or disturbed by the situation, then the invasion is not a significant one, even though the idiosyncracies of the particular plaintiff may make it unendurable to him.' " (*San Diego Gas & Electric Co. v. Superior Court* (1996) 13 Cal.4th 893, 938 (*SDGE*).) In considering whether the interference is unreasonable, "[T]he question is not whether the particular plaintiff found the invasion unreasonable, but "whether reasonable persons generally, looking at the whole situation impartially and objectively, would consider it unreasonable." ' " (*People ex rel. Gallo v. Acuna* (1997) 14 Cal.4th 1090, 1105.)

The facts presented here are not at all like the case of *Lane v. San Diego E. R. Co.* (1929) 208 Cal. 29, the case Johnson cited without discussion in his opening brief. In *Lane*, the dispute was between a building owner who operated a garage with a space for additional stores and an electric railway company. There was evidence the railway

company placed and maintained tracks on a public roadway in front of the building in such a way that it was not possible to park a car or a truck in front of the building while a street car was passing, which occurred in half-hour intervals. (*Id.* at pp. 31–32.) The court in *Lane* determined the railway company's conduct amounted to both a public and a private nuisance because it obstructed access to the building owners' property abutting the street. (*Id.* at pp. 33–34.)

In contrast, Johnson testified Pebble Springs Lane is a private street. The court determined evidence showed the area where the Anguianos built the walls, placed sandbags, and dug trenches was in a dirt area beyond the end of the paved roadway. Their conduct did not impair or obstruct use of the paved road. Further, there was no evidence the alleged obstructions bothered anyone other than Johnson. Therefore, Johnson did not meet his burden on his claim for public nuisance.

2

A private nuisance is any nuisance not covered under the definition of a public nuisance. (Civ. Code, § 3481.) "In distinction to trespass, liability for nuisance does not require proof of damage to the plaintiff's property; proof of interference with the plaintiff's use and enjoyment of that property is sufficient." (*SDGE, supra*, 13 Cal.4th at p. 937.) "[I]n order for a defendant's conduct to constitute a nuisance, the interference with use and enjoyment of land must be both substantial and unreasonable." (*McBride, supra*, 18 Cal.App.5th at p. 1178 citing *SDGE, supra*, 13 Cal.4th at pp. 938–939.)

The requirement for these additional elements "flows from the law's recognition that 'Life in organized society and especially in populous communities involves an

unavoidable clash of individual interests. Practically all human activities unless carried on in a wilderness interfere to some extent with others or involve some risk of interference, and these interferences range from mere trifling annoyances to serious harms. It is an obvious truth that each individual in a community must put up with a certain amount of annoyance, inconvenience and interference and must take a certain amount of risk in order that all may get on together. The very existence of organized society depends upon the principle of "give and take, live and let live," and therefore the law of torts does not attempt to impose liability or shift the loss in every case in which one person's conduct has some detrimental effect on another. Liability for damages is imposed in those cases in which the harm or risk to one is greater than he ought to be required to bear under the circumstances, at least without compensation.' " (*SDGE, supra*, 13 Cal.4th at pp. 937–938.) As in public nuisance cases, the standard is objective for both the degree of harm and whether the interference is substantial. (*Id.* at p. 938.)

The trial court granted judgment on the private nuisance cause of action. Without the benefit of a statement of decision, under the doctrine of implied findings, we must presume the court made all findings necessary to support the judgment including a finding the interference was not substantial or unreasonable. In discussing the defense motion, the court questioned Johnson's credibility about his statement he could not move the boat trailer without crossing the disputed area and commented about the fact he had driveway access to his property. The court also noted he used his boat only twice a month. These comments were supported by substantial evidence.

Although the court commented about the need to show ownership interest in property for a private nuisance action, we will ordinarily uphold a ruling if it is legally correct on any basis. (*Conservatorship of McQueen* (2014) 59 Cal.4th 602, 612, citing *Davey v. Southern Pacific Co.* (1897) 116 Cal. 325, 329–330 ["To justify a reversal, it is incumbent upon the appellant to show an erroneous ruling, and not merely bad reasoning or mistaken views of the law"].) We conclude the court did not err in granting judgment on the issue of private nuisance because any interference was not substantial or unreasonable.

D

To establish a claim for intentional infliction of emotional distress, a plaintiff must prove (1) the defendant's conduct was outrageous; (2) the defendant intended to cause the plaintiff harm; (3) he or she suffered severe emotional distress; and (4) the defendant's conduct was a substantial factor in causing plaintiff's severe emotional distress. (CACI 1600; *Hughes v. Pair* (2009) 46 Cal.4th 1035, 1050.) "Liability for intentional infliction of emotional distress "does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities." ' ' (*Hughes*, at p. 1051.) An essential element of a claim for intentional infliction of emotional distress is outrageous conduct beyond the bounds of human decency. (*Coleman v. Republic Indemnity Ins. Co.* (2005) 132 Cal.App.4th 403, 416.)

The trial court found Johnson did not establish a nexus between the alleged behavior of the Anguianos and Johnson's claimed physical and emotional injuries for an intentional infliction of emotional distress cause of action. Other than saying witnesses at

trial testified about the physical and emotional impact of the Anguiano's conduct, Johnson's opening brief fails to provide either citation to the record or authority as to why the court's order of judgment on this cause of action should be reversed. Therefore, we deem the issue forfeited.¹

II

Prior to trial, the court denied Johnson's summary judgment motion stating he had not met his burden to establish the element of damage. In this appeal, Johnson contends the court erred in making this ruling solely on the damage issue and requests we review the court's summary judgment ruling de novo on the issue of liability. We decline to do so.

First, "Code of Civil Procedure section 437c makes no provision for a partial summary judgment as to liability Because issues of the calculation of damages apparently remain to be determined, it is not appropriate to grant summary judgment."

(*Department of Industrial Relations v. UI Video Stores, Inc.* (1997) 55 Cal.App.4th 1084, 1097; see *Paramount Petroleum Corp. v. Superior Court* (2014) 227 Cal.App.4th 226,

¹ The appellant must "present argument and authority on each point made" (*County of Sacramento v. Lackner* (1979) 97 Cal.App.3d 576, 591; Cal. Rules of Court, rule 8.204(a)(1)(B)) and cite to the record to direct the reviewing court to the pertinent evidence or other matters in the record that demonstrate reversible error. (Cal. Rules of Court, rule 8.204(a)(1)(C); *Guthrey v. State of California* (1998) 63 Cal.App.4th 1108, 1115.) It is not our responsibility to search the appellate record for facts, or to conduct legal research in search of authority, to support the contentions on appeal. (*Del Real v. City of Riverside* (2002) 95 Cal.App.4th 761, 768.) Any point raised that lacks citation may, in this court's discretion, be deemed forfeited. (*Palm Springs Villas II Homeowners Assn., Inc. v. Parth* (2016) 248 Cal.App.4th 268, 287 (*Palm Springs*), citing *Del Real*, at p. 768.)

241 [plaintiff may not "seek summary adjudication of liability only, leaving the resolution of damages to a later trial"].)

Second, "[a]lthough orders denying motions for summary judgment or summary adjudication may be reviewed on direct appeal from a judgment after trial, the appellant must nevertheless show the purported error constituted prejudicial, or reversible, error (i.e., caused a miscarriage of justice). [Citation.] In general, an order denying a motion for summary judgment or summary adjudication does not constitute prejudicial error if the *same question* was subsequently decided adversely to the moving party after a trial on the merits." (*Federal Deposit Ins. Corp. v. Dintino* (2008) 167 Cal.App.4th 333, 343.) Johnson fully litigated his claims for liability and damage during the trial and the court decided the issues adversely. Therefore, Johnson cannot show prejudicial error.

III

Johnson appears to challenge some of the court's evidentiary rulings during trial. We addressed his argument as to the court's exclusion of his testimony about the location of the easement in section I.B.2., *infra*, finding no abuse of discretion.

Johnson does not support his challenge to the remaining evidentiary rulings with either citation to the record or authority. Therefore, we deem these issues forfeited. (*Palm Springs, supra*, 248 Cal.App.4th at p. 287.)

IV

Johnson's challenge to the court's postjudgment order denying costs is not before us. Orders after judgment awarding or denying costs and/or attorney fees are separately appealable under Code of Civil Procedure section 904.1, subdivision (a)(2). (*Apex LLC*

v. Korusfood.com (2013) 222 Cal.App.4th 1010, 1015.) Johnson's notice of appeal in this case is limited to the judgment.

DISPOSITION

The judgment is affirmed. Respondents shall recover their costs on appeal.

McCONNELL, P. J.

WE CONCUR:

HUFFMAN, J.

GUERRERO, J.